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In re Application of
Mockry, et al.
Application No.09/878,860
Filed: 10 May, 2002
Attorney Docket No. 006385.00001

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OFFICE OF PETITIONS
ON PETITION

This is a decision on the renewed petition filed on 9 September, 2003, as a "Renewed Petition to for Corrected Filing Date"--treated as a petition under 37 C.F.R. §1.53--which requests that the application be accorded a filing date of 9 June, 2001.

For the reasons set forth below, the petition under: 37 C.F.R. §1.53 is **DISMISSED**.

The application was deposited on 9 June, 2001.

On 15 March, 2002, the Office mailed a "Notice of Incomplete Nonprovisional Application" and indicated that a filing date was not granted for the application because "the specification does not include a written description of the invention."

On 10 May, 2002, the applicants submitted a petition for a filing date. The applicants contended that one of them, George Mockery, assembled a copy of the provisional application, declarations for himself and his co-inventor Greg M. Mockery, a page of claims, a check in the amount of \$355.00 and a self-addressed stamped receipt card, and submitted the package via US Postal Service Express Mail on 9 June, 2001. The applicant contended that their date-stamped receipt card supported their plea for relief. The entirety of the postcard states as follows:

NEW APPLICATION TRANSMITTAL (SMALL ENTITY)
4 ORIGINAL COPIES OF PROVISIONAL
PAGE "CLAIMS"
CASHIERS CHECK FOR \$355.00
2 DECLARATION FORMS
SELF ADDRESSED POST CARD (FOR RECEIPT PURPOSES)

Notably, the post card fails to state not only the number of pages in the provisional application, but any identifying information about the application such as the application number and filing date--in this case 60/211,208 and 13 June, 2000, respectively.

In dismissing the petition on 14 August, 2002, the decision stated:

Unfortunately, Petitioner's postcard receipt does not identify the number of pages filed in the specification, but only notes that "4 original copies of provisional" were filed. Thus applicant's postcard receipt fails to demonstrate that a written description of the invention was present upon filing the instant application.

In their renewed petition filed on 7 October, 2002, the applicants argued that:

- the applicants, acting *pro se*, assembled and submitted the materials consisting of a copy of the provisional application
- on deposit the Office did not alter the post card content listing, thus indicating that the Office received the complete application; and then
- on 20 December, 2001, the Office issued a filing receipt and a foreign filing license and set a projected publication date of 28 March 2002;
- moreover, it was not until 15 March, 2002, as the application made its way to the process of being prepared for publication at 18 months, that for the first time the Office determined that the application was incomplete.

The applicants then argued that the Office's practice, stated at MPEP §506, imposed an "affirmative duty on the OIPE to give the applicant notice of any defects in the filing of a nonprovisional application, and to issue a PTO-1123 Notice of Incomplete Application."

In dismissing the petition on 18 November, 2002, the decision stated:

While Petitioners can report * * * what they recall doing more than 17 month prior to this writing and submit what purports to be a copy of a certified copy of their provisional application * * *, Petitioners' receipt card does not detail the content more specifically than "copies of provisional"--there is no indication as to what provisional is being referenced, the number of pages included, or the elements contained therein (See: MPEP §503).

In seeking reconsideration in this matter, the instant petition of 9 September, 2003, addresses no

new issues, but rather contends that the applicants' "postcard does itemize each of the component parts that were submitted." And continues:

Comparing the itemized list of the postcard to the MPEP instructions, one sees that each of the component parts are (sic) separately listed, viz., the claims are specified (item 3), the declaration is specified (item 5), the filing fee is specified (item 4) and contrary to the previous decisions the specification ins specified (item 2) "4 Original Copies of Provisional." What else could this item constitute? Applicant was submitting a patent application.

It is the duty of applicants herein to evidence in clear, unmistakable, non-equivocating language what an "item constitutes," and they do not satisfy that requirement with their inquiry as to "what else"--what other possibility--they could be or could have been referring.

Applicants failed to identify in their postcard receipt their provisional application by number and filing date. They did not specify the number of pages contained. They failed to set forth what provisional it was they were submitting to stand as their specification.

Thus, they failed to identify their written description, which is a requirement of a non-provisional application and without which an application cannot obtain a filing date.

They do not now carry their burden of proof by inquiring as to what else it could have been.

The Office is not unmindful that, in their efforts to conserve resources, the applicants elected to assemble their application themselves rather than have the process undertaken by a registered practitioner. But, having done so, the applicants bear the responsibility of that election.

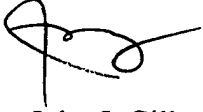
In truth and in fact, the receipt card in question was and is insufficiently detailed to determine what was or was not received by the Office (MPEP §503).

Therefore, absent a sufficiently detailed postcard receipt, the petition must be and hereby is **dismissed**.

Because this petition was not occasioned by the Office, the fee will not be refunded.

The application is being returned to Technology Center 3700 for further processing with the existing filing date of 10 May, 2002.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.

A handwritten signature in black ink, appearing to read "John J. Gillon, Jr.", with a stylized, cursive script.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions